

## **Call for the Biden Administration to Promote Global Environmental Justice by Full Adoption of the Basel Convention**

April 26, 2021

Mr. Joseph Biden, President of the United States, and  
Mr. Antony Blinken, Secretary of State  
Mr. Michael Regan, Administrator, Environmental Protection Agency  
Ms. Brenda Mallory, Chair, Council on Environmental Quality

Dear Sirs and Madame:

With this letter, we, as organizations and individuals promoting a healthy environment and human rights, raise a matter of great urgency and relevance.

### Environmental Justice and the Basel Convention

The Biden Administration has signaled strongly that environmental justice is now a major concern of its Environmental agenda. On January 27, 2021, President Biden signed the executive order<sup>1</sup> on Climate Change, which established the Environmental Justice Interagency Council and an Environmental Justice Advisory Council. On March 29 the latter Council was announced with 26 newly assigned civil society and academic member experts, and at this time EPA Administrator Michael Regan stated that environmental justice would be a major priority for the agency during his tenure. Environmental justice aims to address disproportionately negative effects of environmental and climate degradation on vulnerable communities.

The development of the Biden Administration's strong domestic environmental justice agenda is very welcome and appropriate, but we are concerned that this agenda not be limited to actions within US national borders. It is vital that US actions to eliminate environmental injustice be applicable worldwide. Our concern, in this regard, was heightened at a recent EPA and State Department stakeholders meeting on the Basel Convention<sup>2</sup> that took place on March 29, 2021 -- the same day the Environmental Justice Advisory Council was announced.

The Basel Convention is the global treaty that seeks to prevent uncontrolled exports of hazardous and other wastes between countries and particularly trade in these wastes from developed to developing countries. Despite having signed the Convention in 1989, the US has never ratified it and is now the only developed country in the world having failed to do so. In 2019, the Basel Convention was amended to prohibit exports of all hazardous wastes from developed to developing countries. This amendment is known as the Basel Ban Amendment and was enacted as an instrument to uphold global environmental justice. It is considered one of the most important achievement of the Convention, its only successful textual amendment, and has long been supported by all the European Union as well as by almost all developing countries. Currently, 100 countries have ratified the Amendment.<sup>3</sup>

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<sup>1</sup> [Biden Executive Order on Climate Change](#)

<sup>2</sup> [Basel Convention website](#)

<sup>3</sup> [United Nations Depository Ban Amendment page.](#)

At the aforementioned stakeholders meeting, the State Department Representative John Thompson stated that the US was considering possibly *not* ratifying the Convention but was also exploring ways in which it might be able to ratify the treaty *without* accepting the Basel Ban Amendment found now as new Article 4a.<sup>4</sup> It is very disturbing to realize that the Biden Administration, while advancing environmental justice at home, are seeking to find a way to avoid environmental justice on the global stage.

As the Basel Convention allows for no reservations or exceptions; from a legal standpoint, the US stated intention of exploring an option to create such a "reservation" is an alarming indication of a desperate willingness to directly undermine environmental justice, even as accepted by the global community at large.

### Plastic Pollution and the Basel Convention

In May of 2019, the Basel Convention also achieved another landmark agreement, and began for the first time to address the plastic waste crisis by adding new listings for plastic wastes. As of January 1, of this year, Basel Parties will be asked to control and sometimes prohibit the export of contaminated and mixed difficult-to-recycle plastic wastes. Plastic waste is also a serious environmental justice issue, as the US and other developed countries have for years exported mixed and contaminated plastic wastes to China. After China banned the importation of this waste in 2018, the waste now moves to other Asian countries. The wastes are often sent to poor farming communities for recycling but are not cleanly and safely recycled but instead are picked through for the higher value material, with the rest being dumped and burned in open fields. Unfortunately, the US, not being a Party to the Basel Convention, continues to export these newly listed Basel wastes to countries that cannot legally accept them from the US, without any controls, thus aiding and abetting illegal trafficking in plastic waste. Indeed, US plastic waste brokers continue to send 2,440 metric tonnes per month to non-OECD (Organization for Economic Cooperation and Development) countries.<sup>5</sup>

### Electronic Waste and the Basel Convention

Apart from acting against the worst of the plastic waste crisis, the Basel Convention has also been able to control and prevent the damaging trade and dumping of electronic wastes (such as our old lead-acid car batteries, old computers, monitors and peripherals, laden as they are with toxic heavy metals and organic compounds). Yet again, by remaining the only developed country in the world that has failed to ratify the Convention, the US utterly fails global environmental justice by enabling some of its industries to profit from the poisoning of some of the world's poorest communities. To this day, it is completely legal for US waste brokers and recyclers to export hazardous electronic wastes to any country in the world without any controls whatsoever, even when the receipt of such wastes is unwanted and illegal in the importing country. Ratifying the full Basel Convention would once and for all prevent these types of harmful, uncontrolled exports.

### Just the Facts

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<sup>4</sup> [Basel Convention text where new Article 4a and Annex VII can be found.](#)

<sup>5</sup> See BAN's trade statistics compiled from US Commerce Department Data: <https://www.ban.org/plastic-waste-project-hub/trade-data/usa-export-data>

- The Basel Convention is the world's only international treaty on waste and waste trade.
- It was originally called for by developing countries to ban the export of hazardous and other wastes to them from developed countries.
- It was adopted and signed in 1989 but failed to include a full ban due to US objections to such a provision.
- Nevertheless, in 1995 a ban was adopted as a proposed Amendment due to unrelenting support from developing countries and the European Union, against the wishes of the US.
- Currently, the Basel Convention has 188 Parties, with only 8 UN countries failing to have ratified it: East Timor, Grenada, Haiti, San Marino, South Sudan, Fiji, Solomon Islands and the US.
- The US is the only developed (OECD member) country that has failed to ratify the Convention.
- Of the original signatories at its adoption in 1989, only Haiti and the US have failed to fulfill their registered intent to ratify.
- The Basel Ban Amendment is now part and parcel of the Convention as new Article 4a and Annex VII.
- This Ban Amendment finally entered into force in December 2019. Currently, 100 countries have ratified the Ban Amendment.
- Legal experts agree that when/if the US ratifies the Convention, they will have to accept Article 4a and the new Annex, as the Convention allows no partial ratifications or reservations.
- Despite this, the Biden Administration's State Department has stated they are exploring options to ratify the Convention *without* the Ban Amendment.
- Meanwhile, all manner of hazardous electronic waste and plastic waste can be freely traded from the US, even as it becomes criminal trafficking in waste once it is on its way to developing countries.
- The Biden Administration claims to make Environmental Justice a central theme of its environmental policy.
- Failure to ratify the Basel Convention in its entirety, including all of its articles and annexes, is a US affront to global environmental justice.

#### Previous US actions undermining global environmental justice

-- Throughout the entire history of the Basel Convention from 1989 to the present day, the US, even as a non-Party observer, has actively and aggressively opposed the Basel Ban Amendment.

-- Likewise, the US actively opposed the global adoption of new listings on plastic wastes to provide greater transparency and controls on plastic waste trade to protect global plastic waste dumping on developing countries. These agreements were adopted nonetheless in May of 2019.

-- Following the consensus adoption of the new Basel Convention listings on plastic waste in May of 2019, the US intervened at the OECD to prevent the OECD from automatically adopting these new Basel listings in the OECD waste trade agreement. It also failed in this effort and as a result, the OECD agreement will not cover plastic waste anymore, and other OECD members will not be able to trade in plastic waste with the US without a special agreement.

--In October of 2020, the State Department and EPA, consulting only with industry and not with environmental organizations, signed a secretive deal with Canada to ignore the new Basel controls with respect to trade between the two countries. Such a deal was not legal under the Basel Convention's Article 1, but was hastily signed anyway to allow Canadian waste traders to use the US as a place where their exports can be accomplished legally to developing countries without controls.<sup>6</sup>

#### Calling on the Biden Administration to Promote Global Environmental Justice

***With the above facts and history fully in mind, we, the undersigned organizations and prominent environmental justice advocates call upon the Biden Administration to:***

1. Cease US antagonism to the Basel Convention and the Basel Ban Amendment and take the necessary steps to facilitate and approve ratification of the full Convention, including the new Article 4a and Annex VII (Ban Amendment), at the earliest possible date.
2. Ensure that the implementation legislation for adoption of the Basel Convention includes a full ban on exports, not only of hazardous wastes as prescribed by the Ban Amendment, but also of Basel Annex II wastes (which include the new listings of mixed and dirty plastic waste, household waste, and incinerator ashes).<sup>7</sup>
3. Reverse the US position taken at the OECD and allow the automatic adoption of the new Plastic Amendments by the OECD in their Council Decision on trade in recyclable wastes.<sup>8</sup>
4. Annul the ill-advised and illegal US -- Canada Arrangement, signed on October of 2020, allowing rather for the OECD agreement to once again preside over trade in Basel wastes between the US and Canada and other OECD countries.

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<sup>6</sup> This [agreement](#) was analyzed and deemed as legally inappropriate by the Center for International Environmental Law their paper: [Legal Analysis of the Consequences of the OECD Non-Consensus Determination on the Basel Plastic Amendment \(February 2021\)](#)

<sup>7</sup> This is the same approach taken by the European Union in their Waste Shipment Regulation.

<sup>8</sup> [OECD Council Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations](#)